
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-02-NY-248
)	
IW Limited Liability Company)	NAL/Acct. No. 200332380015
WRCN-FM)	
Newton, MA)	FRN: 0003-7827-60

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 31, 2003

By the District Director, New York Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that IW Limited Liability Company ("IW"), licensee of radio station, WRCN-FM, has apparently violated Sections 11.61(a)(2)(i)(A), 11.61(a)(1)(i), and 11.61(b) of the Commission's Rules (the "Rules"),¹ by failing to conduct required monthly and weekly tests of the Emergency Alert System ("EAS") and failing to maintain station records of required monthly and weekly EAS test messages. We conclude that IW is apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000).

II. BACKGROUND

2. On October 29, 2002, a Commission agent conducted an inspection of radio station, WRCN-FM's EAS, located at 3241 Route 112, Building #7, Medford, NY 11763. Based upon the agent's inspection of WRCN-FM's station records, it was determined that WRCN-FM:

- (a) Failed to conduct required weekly tests of the EAS header and EOM codes for the weeks of August 18-24, 2002 and October 20-26, 2002.
- (b) Failed to conduct required monthly tests of the EAS header codes, Attention Signal, Test Script, and EOM code for the months of August 2002, September 2002, and October 2002.
- (c) Failed to install and maintain EAS equipment so that it is capable of receiving EAS test messages for the months of August 2002, September 2002, and October 2002, and for the week of September 1-7, 2002, and from September 15, 2002 to October 12, 2002.
- (d) Failed to maintain station records of required monthly EAS tests received for the months of August 2002, September 2002, and October 2002, and state reasons why EAS tests were not received.
- (e) Failed to maintain station records of required weekly EAS tests received for the week of September 1-7, 2002, and from September 15, 2002 to October 12, 2002, and state reasons why EAS tests were not

¹ 47 C.F.R. §§ 11.61(a)(2)(i)(A), 11.61(a)(1)(i), and 11.61(b).

received.

3. On November 13, 2002, the New York Office sent a Notice of Violation for failure to conduct required monthly and weekly EAS tests, by First Class and Certified Mail Return Receipt Requested, to IW.

4. On November 26, 2002, the New York Office received a reply to the Notice of Violation from Allan G. Moskowitz, counsel for IW, stating that the required weekly EAS tests were not conducted and no station records were maintained due to personnel changes and insufficient training.

III. DISCUSSION

5. Section 11.61(a)(2)(i)(A) of the Commission's Rules requires broadcast stations to conduct required weekly tests of the EAS header and EOM codes at least once a week at random days and times. Section 11.61(a)(1)(i) of the Commission's Rules requires broadcast stations to conduct required monthly tests of the EAS header codes, Attention Signal, Test Script, and EOM code that conforms to procedures in EAS Operating Handbook, and Section 11.61(a)(1)(v)². Section 11.61(b) of the Commission's Rules requires broadcast stations to make entries in station records of monthly and weekly EAS tests received. WRCN-FM's station records failed to show that required weekly tests of the EAS header and EOM codes were conducted for the weeks of August 18-24, 2002 and October 20-26, 2002. WRCN-FM's station records failed to show that required monthly tests of the EAS header codes, Attention Signal, Test Script, and EOM code were conducted for the months of August 2002, September 2002, and October 2002. Entries were not made in the station records of EAS tests received for the months of August 2002, September 2002, and October 2002, for the week of September 1-7, 2002, and from September 15, 2002 to October 12, 2002, or reasons why required monthly and weekly EAS tests were not received.

6. Based on the evidence before us, we find that, IW willfully³ and repeatedly⁴ violated Sections 11.61(a)(2)(i)(A), 11.61(a)(1)(i), and 11.61(b) of the Rules by failing to conduct required weekly tests of the EAS header and EOM codes for the weeks of August 18-24, 2002 and October 20-26, 2002, failing to conduct required monthly tests of the EAS header codes, Attention Signal, Test Script, and EOM code for the months of August 2002, September 2002, and October 2002, and log entries of reasons why required monthly and weekly EAS tests were not received for the months of August 2002, September 2002, and October 2002, for the week of September 1-7, 2002, and from September 15, 2002 to October 12, 2002.

7. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd

² 47 C.F.R. § 11.61(a)(1)(v).

³ Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

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303(1999) (*“Forfeiture Policy Statement”*)⁵, sets the base forfeiture amount for failure to make required measurements or conduct required monitoring at \$2,000, and base forfeiture for failure to maintain required records at \$1,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (*“Act”*),⁶ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a three thousand dollar (\$3,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁷ and Sections 0.111, 0.311 and 1.80 of the Commission’s Rules⁸, IW is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willful and repeated violations of Sections 11.61(a)(2)(i)(A), 11.61(a)(1)(i), and 11.61(b) of the Commission’s Rules.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission’s Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, IW SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332380015 and FRN: 0003-7827-60.

11. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332380015.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (*“GAAP”*); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

⁵47 C.F.R. § 1.80.

⁶47 U.S.C. § 503(b)(2)(D).

⁷47 U.S.C. § 503(b).

⁸47 C.F.R. §§ 0.111, and 0.311.

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13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to IW Limited Liability Company, Two Newton Executive Park, Newton, MA 02462-1434, and a copy to Kaye Scholer LLP, The McPherson Building, 901 Fifteenth Street, N.W., Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office

Attachment A – FCC List of Small Entities, October 2002

⁹ See 47 C.F.R. § 1.1914.